

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 996 OF 2022**

Vapi Infrastructure and Industrial Township LLP ... Petitioner

Versus

Income Tax Officer Ward – 22(3)(1) and others ... Respondents

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Mr. Rahul Hakani alongwith Mr. Ajay Singh instructed by Mr. Sameer G. Dalal for the Petitioner.

Mr. Akhileshwar Sharma for the Respondents-Revenue.

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**CORAM : K.R. SHRIRAM AND
N.R. BORKAR, JJ.**

DATED : APRIL 19, 2022

PC. :-

1. Petitioner is a limited liability partnership firm engaged in the business of real estate and real estate development. The return of income for A.Y. 2014-2015 was filed by Petitioner on 31st July, 2014 declaring total income as 'Nil'. The return was selected under CASS for scrutiny vide notice dated 31st August, 2015 issued under Section 143(2) of the Income-Tax Act, 1961 (the Act). Notice dated 30th May, 2016 under Section 142(1) of the Act alongwith questionnaire was also issued and served on Petitioner. Petitioner filed its reply dated 6th June, 2016 providing all details including a note on the nature of business, return of income etc. alongwith profit and loss account and balance-sheet and relevant scheduled balance-sheet as on 31st March, 2014

and details of bank accounts.

2. Another notice dated 6th September, 2016 under Section 142(1) of the Act was issued raising various queries which was replied to by Petitioner vide its letter dated 16th September, 2016 providing further details. By another letter dated 6th December, 2016 Petitioner submitted further details and documents including loan confirmation of eight parties alongwith copies of ITR, computation of income, bank statement etc. By another letter dated 19th December, 2016 Petitioner provided further details including a copy of assessment order under Section 143(3) of the Act for A.Y. 2013-2014, a copy of ITR, computation of income, balance-sheet etc. for A.Y. 2013-2014.

3. In the meanwhile, on or about 11th November, 2016, Respondent No.1 had also issued notices to various parties under Section 133(6) of the Act for verification and confirmation of loan transactions and called for supporting documents. The said parties had responded and also disclosed their identity, explained credit worthiness, genuineness of transactions, source of funds etc.

4. Assessment for A.Y. 2014-2015 was completed under Section 143(3) of the Act and an assessment order dated 19th December, 2016, after considering responses of parties to notices issued under Section 133(6) of the Act and all documents and explanations submitted by Petitioner, came to be passed.

5. Thereafter, Petitioner received impugned notice dated 31st March, 2021 from Respondent No.1 alleging that there are reasons to believe Petitioner's income chargeable to tax for A.Y. 2014-2015 has escaped assessment. Petitioner filed its returns again and as requested by Petitioner, reasons for re-opening was also provided by Respondent No.1, by a communication dated 12th October, 2021. As stated in the reasons, according to Respondent No.1, Petitioner had unsecured loans of Rs.1,17,48,08,731/- during A.Y. 2014-2015. Out of this Rs.27,87,70,259/- was net amount of loan received during the year. Petitioner had provided confirmation from the loan providers but it is observed that income of the loan providers was very low during the year as per the chart shown in the reasons. As the loan given by those parties has been credited in the books of Petitioner during the year under consideration and as the assessee offered no explanation, i.e., about the nature and the source of the above loan, the credit worthiness of the creditor and genuineness of the transaction has not been explained, the source of above loan remains unexplained and needs to be added to the total income of the assessee.

6. Petitioner vide a letter dated 21st October, 2021 filed its objection for re-opening. In the objection, Petitioner specifically has mentioned that specific queries were raised during assessment proceedings for the loans

provided, details have been provided to the assessing officer who had also independently issued notices under Section 133(6) of the Act to which third parties had replied and provided the required documents explaining their identity, credit worthiness and genuineness of the loans provided and after being satisfied the assessment order came to be passed. Hence, it was not correct to say that the source of loans remained unexplained and the re-opening was not permissible as it was only due to change of opinion. In the order dated 22nd December, 2021, disposing the objections, which is also impugned in the Petition, Respondent No.1 has conveniently remained silent on the Petitioner's submission about queries being raised during the assessment proceedings and issuance of notices under Section 133(6) of the Act. In the Affidavit in Reply to the Petition, of course, Respondent No.1 has admitted that notices under Section 133(6) of the Act were issued and confirmation from loan providers were obtained during the assessment proceedings.

7. Having considered the Petition with the documents annexed thereto, Affidavit in Reply and having heard the Counsels, we are satisfied that re-opening proposed is purely based on change of opinion and the entire issue which is the subject matter of the reasons recorded has been raised during the assessment proceedings, response obtained from Petitioner and Petitioner's

explanation has been accepted by the Assessing Officer. Assessing Officer also, we would say, was satisfied with the credit worthiness and details provided by third party lenders. Mr. Sharma submitted that in the Assessment Order this issue has not been discussed. That does not help the cause of Respondents because it is settled law that once query has been raised and answers have been given, even if the assessment order is silent, the Assessing Officer is supposed to have considered the issue and is deemed to have been satisfied with the explanation offered by the assessee. Moreover, in this case, notice under Section 133(6) of the Act has also been issued to third party lenders who have, as admitted in the Affidavit in reply, given confirmation about the transaction and credit worthiness.

8. In these circumstances, we will have to note that notice issued under Section 148 of the Act dated 31st March, 2021 impugned in this Petition has to be set aside and consequently Order dated 22nd December, 2021 also has to go. Ordered accordingly.

9. Before we part, we have to note that there is an incorrect statement made in the Affidavit-in-reply. In paragraph 7 of Affidavit in Reply, it is stated that during the assessment proceedings, confirmation from the loan providers was obtained under Section 133(6) of the Act. But in paragraph 11 of the Affidavit, it is stated that *“the credit worthiness of the creditor and*

genuineness of the transaction have not been explained". In our view, this averment in paragraph 11 is an incorrect statement because during the assessment proceedings notice under Section 133(6) has been issued and confirmation has been received from the lenders with documents and the Assessing Officer was satisfied. Moreover, if the confirmation alongwith credit worthiness and genuineness of transaction even if we assume have not been explained, certainly it would have been mentioned in the assessment order. We have to also note that in the Petition, there is an averment in paragraph 5(a) about how the loan was obtained, details of loan confirmation filed, independent inquiry made under Section 133(6) of the Act etc., none of which has been denied in the Affidavit in Reply. Therefore, we observe that statement in the Affidavit in Reply that the credit worthiness of the creditor and genuineness of transaction have not been explained is incorrect. Purely by way of indulgence, we are not issuing any notice for perjury against the officer who has filed the Affidavit in reply.

10. Petition disposed.

11. At the request of Mr. Sharma we are not imposing costs on the concerned Assessing Officer.

(N.R. BORKAR, J.)

(K.R. SHRIRAM, J.)